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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/780,961
Inventor(s) : Bonelli et al.
Filed : February 18, 2004
Art Unit : 3761
Examiner : Ginger T. Chapman
Docket No. : 9534
Confirmation No. : 2314
Customer No. : 27752
Title : DISPOSABLE ABSORBENT ARTICLE WITH WINGS
HAVING CORRUGATED REGINS AND METHODS OF
MANUFACTURING THEREOF

APPEAL BRIEF

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on May 19, 2006.

A timely Notice of Appeal was filed on September 22, 2006. A petition for a one-month extension of time is submitted herewith.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

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STATUS OF CLAIMS

Claims 1-9 are pending in the present application. No additional claims fee is believed to be due.

Claims 10-20 have been withdrawn as a result of a previous restriction requirement.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 claims a disposable absorbent article (such as feminine hygiene article shown in FIGS. 8 and 9 as 10B) having one or more side flaps or wings 2 (also 22A or 22B, as disclosed at page 12, line 22). The disposable absorbent article comprises a fluid-pervious topsheet 12, a fluid-impervious backsheet 16 opposing the topsheet, and an absorbent core 20 disposed between the topsheet and the backsheet. The article has a longitudinal direction L and a transverse direction T perpendicular thereof.

The one or more wings 2 extend in the transverse direction and comprise at least one corrugated region C including a multiplicity of ridges 26 and recesses 24. The ridges 26 on the wings 2 rise toward a garment-facing surface 18 of the article and have glue strips 28 attached to crests 30. The article also includes a release material 32 for covering the at least one corrugated region C, the release material 32 contacts the glue strips 28.

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. Claims 1-5, 7 and 8 are rejected under 35 USC §103(a) as being unpatentable over Redwine et al, US 5,891,121.
- II. Claims 6 and 9 are rejected under 35 USC §103(a) as being unpatentable over Redwine et al, US 5,891,121 as applied to claims 1-5 above and further in view of Chappell et al., US 5,518,801.

ARGUMENTS

I. Rejection of Claims 1-5, and 7

Redwine et al, US 5,891,121 fails to teach, disclose or suggest the invention of Claims 1-5, 7 and 8, and therefore the rejection under 35 USC §103(a) should be withdrawn.

Appellants submit that the rejection of the present invention under 35 U.S.C. §103 must comport with the standard set forth in *Graham v. John Deere Company* 383 US1, 148 USPQ 459 (1966), explained in MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) Explain why the proposed modification would be obvious.

To satisfy Step (3), the Patent Office must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). See *In re Jones*, 958 F2d 347, 21USPQ 2d 1941(Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch*, 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992).

With respect to Claim 1, the Redwine reference does not disclose "glue strips attached to crests of said ridges" as recited in Claim 1. Appellants can find no suggestion in Redwine to modify Redwine to achieve the claimed invention. In fact, as shown below, Redwine teaches exactly the opposite, i.e., a glue strip located remotely from and not attached to crests of ridges.

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The Office Action refers to FIG. 5 of Redwine, which does not show glue strips attached to crests of ridges, and concludes based on this non-showing that "it would have been obvious ... to form the glue strips of Redwine attached to the crests of the ridges of the corrugated region in order to fasten the side flaps to the underside f the wearer's panties since Redwine states ... that the advantage of forming the corrugated side flaps with gluestrips is that the glue strips allow the corrugated side flaps to adhere to the underside of the wearer's panties ..." (Final Office Action of 5/19/2006, page 3).

Appellants strongly disagree and object to this reasoning. The conclusory statement that what Redwine shows explicitly actually suggests the opposite is unsupported with any factual basis. Redwine explicitly and clearly teaches exactly the opposite of what is claimed. Redwine teaches one glue strip placed in a location away from the corrugations. The corrugations of Redwine are not in a location on the wings that would benefit from glue. There is no suggestion in Redwine of any benefit to placing glue strips in the location of Redwine's corrugations.

Therefore, Appellants respectfully submit that a rejection based on the idea that the skilled person would be motivated to do exactly the opposite of what Redwine teaches to achieve a lesser benefit than what Redwine provides cannot stand. There is no possible motivation for such a modification of Redwine, and the Office Action simply assumes the motivation. The rejection seems to be based on impermissible hindsight.

The Office Action further states that modification of Redwine is obvious because "the advantage of forming the corrugated side flaps with glue strips is that the glue strips allow the corrugated side flaps to adhere to the underside off the wearer's panties thereby securing the article in place in the wearer's panties". Appellants submit that this statement misses the point. No one will argue that it is beneficial to have a corrugated side flap and that it is beneficial for this side flap to adhere to the panties. This is elementary and uncontested. What the Office Action fails to address, and what is not elementary, is the invention that involves a particular placement of both corrugations (ridges and recesses) and glue strips. The claimed structure involves attaching glue strips to crests of ridges, which is a structure Redwine neither teaches nor suggests.

Because the Office Action has provided teaching or suggestion in Redwine that would motivate the skilled person to modify Redwine in such a manner so as to achieve the claimed invention, the Appellants respectfully submit that the Office Action has failed to establish a *prima facie* case of obviousness.

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Accordingly, Appellants respectfully submit that the Office Action has failed to make out a *prima facie* case of obviousness in accordance with MPEP §2143. Appellants respectfully request that the rejection of Claims 1-5, 7 and 8 be withdrawn.

II. Rejection of Claims 6 and 9

Redwine et al., US 5,891,121 as applied to claims 1-5 above and further in view of Chappell et al., US 5,518,801 fails to teach, disclose or suggest the invention of Claims 6 and 9, and therefore the rejection under 35 USC §103(a) should be withdrawn.

As shown above with respect to Claim 1, Appellants submit that the Office Action has provided teaching or suggestion in Redwine that would motivate the skilled person to modify Redwine in such a manner so as to achieve the claimed invention, the Appellants respectfully submit that the Office Action has failed to establish a *prima facie* case of obviousness. Specifically, the Office Action has provided no suggestion in Redwine of any benefit to placing glue strips in the location of Redwine's corrugations.

Chappell et al. fails to remedy the deficiencies of Redwine. Chappell et al. does not disclose the use of ridges and recesses on a wing of an absorbent article. Moreover, Chappell et al. does not disclose placing glue strips attached to the crests of the ridges. Finally, Chappell et al. does not disclose a release material for contacting the glue strips.

Thus, at least three of the claim limitations not taught or suggested in Redwine are likewise not taught or suggested in Chappell et al. Therefore it is impossible for the combination to result in achieving the claimed invention at all.

Because the Office Action has provided teaching or suggestion in Redwine or Chappell that would motivate the skilled person to combine Redwine and Chappell in such a manner so as to achieve the claimed invention, the Appellants respectfully submit that the Office Action has failed to establish a *prima facie* case of obviousness for Claims 6 and 9.

Accordingly, Appellants respectfully submit that the Office Action has failed to make out a *prima facie* case of obviousness in accordance with MPEP §2143. Appellants respectfully request that the rejection of Claims 6 and 9 be withdrawn.

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SUMMARY

In view of all of the above, it is respectfully submitted that the rejections under 35 USC §103(a) should be withdrawn.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY


Signature

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CLAIMS APPENDIX

1. (Original) A disposable absorbent article having one or more side flaps or wings, comprising:
 - (a) a fluid-pervious topsheet, a fluid-impervious backsheet opposing said topsheet, and an absorbent core disposed between said topsheet and said backsheet, said article having a longitudinal direction and a transverse direction perpendicular thereof;
 - (b) said one or more wings extending in said transverse direction and comprising at least one corrugated region including a multiplicity of ridges and recesses, said ridges rising toward a garment-facing surface of said article and having glue strips attached to crests of said ridges; and
 - (c) a release material for covering said at least one corrugated region, said release material contacting said glue strips.
2. (Original) The article of Claim 1, wherein said article is a catamenial napkin for absorbing menses or an incontinence pad for absorbing urine.
3. (Original) The article of Claim 1, wherein said multiplicity of ridges and recesses extend in a direction perpendicular to said longitudinal direction.
4. (Original) The disposable absorbent article of Claim 1, wherein said multiplicity of ridges and recesses extend in a direction parallel to said longitudinal direction.
5. (Original) The disposable absorbent article of Claim 1, wherein said multiplicity of ridges and recesses extend in a direction forming an angle with said longitudinal direction, said angle being greater than 0 degrees and less than 90 degrees.
6. (Original) The disposable absorbent article of Claim 1, wherein said at least one corrugated region includes a multiplicity of said ridges and recesses extending in a direction that is different from a multiplicity of ridges and recesses of a second corrugated region.

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7. (Original) The article of Claim 1, wherein said ridges and recesses have a pitch ranging from about 1 mm to about 5 mm.
8. (Original) The article of Claim 1, wherein said ridges and recesses have a height ranging from about 1 mm to about 6 mm.
9. (Original) The article of Claim 1, wherein said backsheet comprises at least one corrugated region.
10. (Withdrawn) A method of producing a composite material including a corrugated material, a release material opposed thereto, and a multiplicity of glue strips disposed between the release material and the corrugated material and attached to the crests of the corrugated material, the method comprising the steps of:
 - (a) providing at least two corrugating rolls, counter-rotating and engaged with each other, said corrugating rolls having a multiplicity of ridges and recesses disposed on the outer surfaces of said corrugating rolls, said ridges extending perpendicularly to axes of rotation of said corrugating roll and being separated from each other at a pitch;
 - (b) providing a first material between said corrugating rolls for deforming said first material into a corrugated material having a multiplicity of ridges and recesses;
 - (c) heat-treating said corrugated material at a temperature less than the melting temperature of said first material;
 - (d) providing a release material having a multiplicity of glue strips disposed in a machine direction and at said pitch therebetween; and
 - (e) combining said release material with said corrugated material, wherein said multiplicity of glue strips are attached to crests of said ridges of said corrugated material to form said composite material.
11. (Withdrawn) The method of Claim 10, wherein said pitch between said grooves of said ring rolls is from about 1 mm to about 5 mm.

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12. (Withdrawn) The method of Claim 10, wherein the step of providing a release material further comprises the step of depositing a multiplicity of glue strips by a glue applicator.
13. (Withdrawn) The method of Claim 10, wherein said glue applicator is a slot applicator.
14. (Withdrawn) The method of Claim 10, wherein the step of combining further comprises the step of pressing said release material against said corrugated material to attach said glue strips to said ridges of said corrugated material.
15. (Withdrawn) The method of Claim 10, wherein said composite material comprises a wing of a disposable absorbent article.
16. (Withdrawn) The method of Claim 10, wherein said composite material comprises a backsheet of a disposable absorbent article.
17. (Withdrawn) A method of producing a composite material including a corrugated material, a release material opposed thereto, and a multiplicity of glue strips disposed between the release material and the corrugated material and attached to the crests of the corrugated material, the method comprising the steps of:
 - (a) providing at least two corrugating rolls, counter-rotating and engaged with each other, said corrugating rolls having a multiplicity of ridges and recesses disposed on the outer surfaces of said corrugating rolls, said ridges extending perpendicularly to axes of rotation of said corrugating roll and being separated from each other at a pitch;
 - (b) providing a first material between said corrugating rolls for deforming said first material into a corrugated material having a multiplicity of ridges and recesses;
 - (c) heat-treating said corrugated material at a temperature less than the melting temperature of said first material;

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- (d) providing a glue-covered roll for contacting crests of said ridges of said corrugated material with a glue to transfer said glue from said glue-covered roll to said crests of said ridges of said corrugated material;
- (e) providing a release material; and
- (f) combining said release material with said corrugated material, wherein said glue at said crests is disposed between said corrugated material and said release material to form said composite material.

18. (Withdrawn) The method of Claim 17, wherein said pitch between said grooves of said ring rolls is from about 1 mm to about 5 mm.

19. (Withdrawn) The method of Claim 17, wherein said composite material comprises a wing of a disposable absorbent article.

20. (Withdrawn) The method of Claim 17, wherein said composite material comprises a backsheet of a disposable absorbent article.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None

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